

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-39, 45-61, 64-70, 73-102, 106, and 107 are pending in the present application. Claims 40-44, 62, 63, 71-72, and 103-105 are canceled without prejudice and Claims 1, 4, 8, 9, 12-15, 19-27, 30-35, 37, 38, 45-48, 50-53, 57-59, 64-66, 69, 70, 73, 82-89, 95, 100, 106, and 107 are amended by the present amendment.

In the outstanding Office Action, the Election of Species was made final; the drawings were objected to; Claims 66-70 were rejected under 35 U.S.C. § 112, second paragraph; Claims 73-81 (the outstanding Office Action mistakenly states Claims 1 and 7) were rejected under 35 U.S.C. § 102(b) as anticipated by Gelbart (U.S. Patent No. 6,268,948 B1); Claims 82-102 and 107 (the outstanding Office Action mistakenly states Claims 83-102 and 107) were rejected under 35 U.S.C. § 103(a) as unpatentable over Gelbart; and Claims 1-39, 45-61, 64, 65, and 106 were allowed.

Applicants thank the Examiner for the indication of allowable subject matter and for the courtesy of an interview extended to Applicants' representative on April 30, 2004. During the interview differences between the claims and applied art were discussed. Further, claim amendments clarifying the claims over the applied art were discussed. The present response sets forth those discussed claim amendments. The Examiner indicated he would further review the amended claims in view of a filed response. Arguments presented during the interview are reiterated below.

As discussed during the interview, an Information Disclosure Statement (IDS) was filed in this application on March 28, 2002, and the references presented in the IDS have not yet confirmed as acknowledged. A copy of the filed IDS and the documents filed on March

28, 2002, are enclosed for the Examiner's convenience and Applicants respectfully request that the references of the IDS be confirmed as acknowledged.

Regarding the statement made in the outstanding Office Action at page 2, first paragraph, that the "traversal [of the election] is in on the grounds that Group I and II are neither independent nor distinct," Applicants respectfully disagree. Applicants note that in the Response to the Election Requirement filed on December 24, 2003, Applicants did **not** present such a statement. Further, Applicants respectfully submit that the Election Requirement was traversed in that Response "because the PTO has not carried forward its burden of proof to establish that searching and examining both of the noted sets of claims would be an undue burden."¹ Therefore, Applicants respectfully request that the next Office Action correct the above discussed statement regarding the grounds for traversal of the Election Requirement.

Regarding the objection to the drawings, formal drawings correcting the figures as indicated in the Draft Person's Patent Drawing Review are filed with this response without adding any new matter. Accordingly, it is respectfully requested that this objection be withdrawn.

Regarding the rejection of Claims 66-70 under 35 U.S.C. § 112, second paragraph, independent Claim 66 is amended to more clearly recite a relationship between a "non-parallel gap" and a "rectangular shape" of the gap. More specifically, the gap is non-parallel in a vertical cross-section as shown in Figure 5 for example and the gap has a rectangular shape in a horizontal plane. No new matter is believed to be added. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claims 73-81 were rejected under 35 U.S.C. § 102(b) as anticipated by Gelbart. That rejection is respectfully traversed.

¹ Response filed December 24, 2003, page 1, second to last paragraph.

Independent Claim 73 is amended, as discussed during the interview, to recite that “a light emitted from said light emission element is reflected by said light reflection surface in random directions when said beam is driven and in one direction when said beam is not driven.” In addition, Claim 73 is amended to better conform with U.S. claim drafting practice. The claim amendments find support for example in Figures 3 and 4. No new matter is believed to be added.

Amended independent Claim 73 is directed to a light modulator that includes a fixed electrode, a beam opposed to a fixed electrode through a gap, and a light emission element. The beam has a light reflection surface such that light emitted from the light emission element is reflected by the light reflection surface in random directions when the beam is driven by a driving voltage and in one direction when the beam is not driven.

In a non-limiting example, Figure 3 shows the light modulator having the fixed electrode 3 and the beam 2 having the light reflection surface 1 and being opposed to the fixed electrode 3 through a gap G. In another non-limiting example, Figure 79 shows the light emission element 202 emitting light. The light emitted from the light emission element 202 is reflected by the light reflection surface 1 in (i) random directions when the beam 2 is driven (the driving voltage is ON) as shown in Figure 3, and (ii) in one direction when the beam 2 is not driven (the driving voltage is OFF) as shown in Figure 3.

Gelbart shows in Figure 2 an incident light 15 that is reflected by a mirror 16 and a fixed electrode 17 that applies an electrostatic force to the mirror 16. However, as discussed during the interview, Gelbart shows clearly in Figure 2 that the light reflected by the mirror 16 follows a *single* fixed direction, from the mirror 16 through a lens 7 to a polarization plate 6, and the reflected light is *not randomly reflected* when the mirror 16 is driven to be a concave mirror 16'. In other words, Gelbart uses a prism 5 to separate the incident light 15

from the reflected light 15' and not the mirror 16 because the mirror 16 reflects the incident light 15 on the same optical path. In addition, Gelbart discloses at column 3, lines 34-40, that retro-reflection "is achieved at position 16', where the incident light 15 is **focused perfectly** on the reflected surface" (emphasis added), which excludes the possibility of random reflection.

Therefore, Gelbart does not teach or suggest that light emitted from a light emission element is reflected by a light reflection surface in random directions when a beam is driven and in one direction when the beam is not driven, as recited in amended independent Claim 73.

Accordingly, it is respectfully submitted that independent Claim 73 and each of the claims depending therefrom patentably distinguish over Gelbart.

Claims 82-102 and 107 were rejected under 35 U.S.C. § 103(a) as unpatentable over Gelbart. That rejection is respectfully traversed.

Independent Claims 82 and 107 are amended similar to independent Claim 73 and to better conform with U.S. claim drafting practice without adding any new matter.

Accordingly, it is respectfully submitted that independent Claims 82 and 107 and each of the claims depending therefrom patentably distinguish over Gelbart for the same reasons as above.

The outstanding Office Action states in the "Allowable Subject Matter" section at page 8, that Claims 1-39, 45-61, 64, and 65 are allowed because "a substrate electrode [is] formed in a concave section." However, as discussed during the interview, the device of the allowed claims has a substrate that has a concave section in which the substrate electrode is formed and the substrate electrode does not have a concave section. Applicants respectfully submit that Claims 1-39, 45-61, 64, and 65 should be allowed because independent Claims 1,

45, 46, and 47 are amended similar to independent Claim 73 and independent Claims 48, 64, and 65 recite a hole section formed in a thin film that is neither taught nor suggested by Gelbart. Accordingly, it is respectfully requested that the reasons for allowance for Claims 1-39, 45-61, 64, and 65 be restated in the next Office Action.

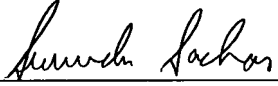
Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
GJM:SS:RFF\la



Gregory J. Maier
Registration No. 25,599
Surinder Sachar
Registration No. 34,423
Attorneys of Record